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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,900	09/28/2000	Stuart A. Fraser	CF/008	7800
64558	7590	03/24/2008	EXAMINER	
ROPEs & GRAY LLP			ZURITA, JAMES H	
PATENT DOCKETING 39/361				
1211 AVENUE OF THE AMERICAS			ART UNIT	PAPER NUMBER
NEW YORK, NY 10036-8704			3625	
			MAIL DATE	DELIVERY MODE
			03/24/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/670,900	FRASER ET AL.
	Examiner	Art Unit
	James H. Zurita	3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 04 December 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) See Continuation Sheet is/are pending in the application.  
 4a) Of the above claim(s) 209-223 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) \_\_\_\_\_ is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/ are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

**Continuation of Disposition of Claims:** Claims pending in the application are Independent claims 1, 13, 34, 53, 74, 95, and 209, Dependent claims 3-4, 6-12, 14-16, 22, 31-33, 36-37, 50-52, 55-56, 71-73, 76-77, 92-94, 97-98, 113-115, 136-208, and 210-223.

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 4 December 2007 has been entered.

***Response to Amendment***

On 4 December 2007, applicant Applicant's submission filed on 4 December 2007 has been entered.

Claims 1, 3-4, 6-17, 20-37, 41-56, 60-77, 81-98, 102-119, and 123-135 are pending and stand rejected.

Applicant amended independent claims 1, 13, 34, 53, 74, and 95 and dependent claims 3-4, 6-12, 14-16, 22, 31-33, 36-37, 50-52, 55-56, 71-73, 76-77, 92-94, 97-98, and 113-115. Applicant cancelled claim 116 and dependent claims 17, 20-21, 23-30, 35, 41-49, 54, 60-70, 75, 81-91, 96, 102-112, 117-119, and 123-135.

Applicant added independent claim 209 and new dependent claims 136-208 and 210-223.

Accordingly, the following claims are under consideration:

Independent claims 1, 13, 34, 53, 74, 95, and 209.

Dependent claims 3-4, 6-12, 14-16, 22, 31-33, 36-37, 50-52, 55-56, 71-73,

***Election/Restriction***

Newly submitted claims 209-223 are directed to an invention that is independent and distinct from the invention originally claimed for the following reasons:

Invention I – Independent claims 1, 13, 34, 53, 74, 95, Dependent claims 3-4, 6-12, 14-16, 22, 31-33, 36-37, 50-52, 55-56, 71-73, 76-77, 92-94, 97-98, 113-115, 136-208, classified in class 705/26 are directed to methods that include selection of transfer by auction and transfer by advertisement.

Invention II – claims 209-223 are drawn to a new invention, also in class 705 and subclass 26, directed to methods for selling items.

**Invention I and Invention II** are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. See MPEP § 806.05(d).

In the instant case, invention II has separate utility such as

...having authorized for the item a transfer that is contrary to the at least one restriction on transferability...

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter and the search for one is not required for the other, restriction for examination purposes as indicated is proper.

***Response to Arguments***

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

The reply filed on 4 December 2007 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s):

There is no discussion of claims 209-223 and how they differ from Prior Art.

See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H. Zurita whose telephone number is 571-272-6766. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**James Zurita**  
**primary Examiner**  
**Art Unit 3625**  
19 February 2008

*James Zurita*  
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PRIMARY EXAMINER

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